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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/135,046 10/12/93 GARVIN

R

CRANE, D EXAMINER

C2M1/0824

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PORTLAND, OR 97201

ART UNIT PAPER NUMBER

3201

3

DATE MAILED: 08/24/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire THREE month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice re Patent Drawing, PTO-948.        |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.      | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-12 are pending in the application.

Of the above, claims 10-12 are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 1-6, 9 are rejected.

5. ☒ Claims 7, 8 are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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**RESTRICTION REQUIREMENT**

Restriction to one of the following inventions has been required under 35 U.S.C. § 121:

- I. **Claims 1-9**, drawn to a method and apparatus for machine treating and filling a bag, classified in Class 53, subclass 432.
- II. **Claims 10-12**, drawn to a method for filling a bag and treating the contents, classified in Class 53, subclass 432.

The inventions are distinct, each from the other because of the following reasons:

Inventions I (**claims 1-9**) and II (**claims 10-12**) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations. (M.P.E.P. § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the method and apparatus can be used in the filling and treating of contents placed within a porous flexible bag, the porosity of the bag facilitating "breathing" of the

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content.. The subcombination has separate utility such as being practiced manually.

Because these inventions are distinct for the reasons given above with the searches and scope considerations between the two inventive concepts differ, restriction for examination purposes as indicated is proper.

#### **ELECTION**

During a telephone conversation with Mr. R. Harrington on August 17, 1994 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in responding to this Office action. Claims 10-12 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

#### **REJECTION OF CLAIMS ON FORMAL MATTERS**

**Claims 1 and 5** are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With specific reference to claim 1, the method calls "for the treatment of bagged material", however, the method steps do not positively provide a step of

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accomplishing this treatment. Note that the last five lines of claim 1, starting with the phrase "...extending an end of the conduit exterior of the bag ~~for~~ connection to a media source..." (emphasis added), fails to actually effect the connection of the conduit to a media source, which would permit treatment of the bag contents. Accordingly, the method steps do not comport with the preamble of the claims. The scope of the method is unclear.

#### **STATUTE CITATIONS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same

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person or subject to an obligation of assignment to the same person.

#### REJECTION OF CLAIMS OVER PRIOR ART

**Claim 6** is rejected under 35 U.S.C. § 102(b) as being anticipated by **Eggenmuller** (3,687,061). Note Figures 1-4 where the "feed tube" is shown at 32.

**Claims 1-5 and 9** are rejected under 35 U.S.C. § 103 as being unpatentable over **Eggenmuller** (3,687,061) in view of **Meyer** (5,269,829). The claimed method and apparatus is substantially shown in Figures 10-13 of **Eggenmuller** with the exception of providing a perforated conduit which can be connected to a media source at the open end of the bag. **Eggenmuller** does show in the embodiment of Figure 1-4 at conduit 32 extending from the mouth of the tunnel at the open end of the bag "suitable (for) ventilation" (column 5, second to last paragraph). **Meyer** makes evident perforated conduits for flowing a media source within the bagged contents. It would have been obvious to the skilled artisan at the time of applicant's invention to have modified **Eggenmuller's** embodiment of Figures 10-13 by further providing a conduit along the base of the bag as depicted in the embodiment of Figures 1-4 so as to fully aerate the contents of the bag and to further provide perforations within the conduit as shown by **Meyer** so as to facilitate aerating the entire length of the

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contents. Providing a plurality of these conduits 32 (as shown in **Eggenmuller**), as specified in claim 9, would also have been obvious so as to provide a fluidized bed within the entire base area of the bag. Since it is common in the grain drying art to "force" air within the contained grain to prevent spoilage of the grain, it would have been obvious to have connected the ventilating conduit 32 to a forced air source. As to claim 3, see Figure pipe 54 in Figure 10.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

**Claims 7 and 8** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

#### **RESPONSE BY APPLICANT(S)**

Applicant(s) response to be fully responsive must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references

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cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

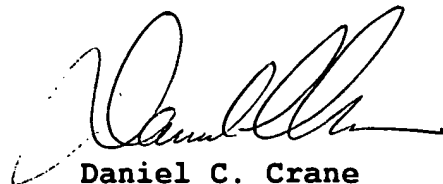
#### **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(703) 308-1870**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.

Documents related to the instant application may be submitted directly to Group 3200 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3200 Facsimile Center number is **(703) 305-3579**.

DCCrane (14W)  
August 19, 1994



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3201